



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204, 212, and 252**

**[Docket DARS-2020-0007]**

**RIN 0750-AK30**

**Defense Federal Acquisition Regulation Supplement: Data  
Collection and Inventory for Services Contracts (DFARS Case  
2018-D063)**

**AGENCY:** Defense Acquisition Regulations System, Department of  
Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal  
Acquisition Regulation Supplement to implement a section of the  
United States Code that requires the collection of data on  
certain DoD service contracts.

**DATES:** Comments on the proposed rule should be submitted in  
writing to the address shown below on or before **[Insert date 60  
days after date of publication in the FEDERAL REGISTER]**, to be  
considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2018-D063,  
using any of the following methods:

- o *Regulations.gov*: <http://www.regulations.gov>. Search for  
"DFARS Case 2018-D063" under the heading "Enter keyword or ID"

and select "Search." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D063" on any attached document.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2018-D063 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under Defense Federal Acquisition Regulation System (DFARS) case 2012-D051, DoD published a proposed rule in the *Federal Register* at 79 FR 32522 on June 5, 2014, to implement section 807 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (10 U.S.C. 2330a). Section 807 required DoD to:

establish a data collection system that provides certain data on the purchasing of services by DoD, and submit to Congress an annual inventory of service contracts awarded by or on behalf of the DoD. The proposed rule required contractors to enter the contract data required by the statute into a DoD-unique database, Enterprise Contractor Manpower Reporting Application (ECMRA). Fourteen respondents submitted comments in response to the proposed rule.

Subsequently, section 812 of the NDAA for FY 2017 amended 10 U.S.C. 2330a to narrow the scope of contracts to which the data collection requirement applies. As a result, DFARS Case 2012-D051 was closed and rolled into this new DFARS case to implement 10 U.S.C. 2330a, as amended.

Under a similar but different statute, Federal agencies, other than DoD, are required by Federal Acquisition Regulation (FAR) subpart 4.17 to report annually on activities performed by service contractors. Since the publication of the proposed rule DFARS case 2012-D051, DoD has elected to adopt the approach used by other Federal agencies to collect service contract data. The approach uses the Federal Procurement Data System (FPDS), an existing source of contract information for the Federal Government, to provide a majority of the information required by 10 U.S.C. 2330a. The data that is not available in FPDS is entered annually by the contractor in the System for Award

Management (SAM). Adopting a Governmentwide approach to collecting service contract data reduces burden on both industry and DoD, improves data integrity and accuracy, and reforms DoD's business practices for greater performance and affordability.

## **II. Discussion and Analysis**

### *A. Discussion of Proposed Rule.*

This rule proposes to revise the DFARS to implement 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017. This rule will require contractors to report data in SAM on an annual basis when they are awarded a DoD contract or task order that is valued in excess of \$3 million and is for logistics management services, equipment related services, knowledge-based services, or electronics and communications services.

When applicable, contractors will be required to annually report: (1) the total dollar amount invoiced for, and (2) the total number of direct labor hours expended on services performed under the contract or task order during the preceding fiscal year. The total number of direct labor hours reported to SAM should be the total of both the contractor hours and its subcontractors' hours. A new basic DFARS clause and an alternate I clause have been created to advise applicable contractors of the policy and requirements for reporting data in SAM.

### *B. Analysis of Public Comments*

DoD reviewed the public comments received in response to DFARS Case 2012-D051. A discussion of the comments is provided as follows:

*1. Exemptions*

*Comment:* Several respondents recommended that the rule exempt certain areas including: research and development projects; architect and engineering services; telecommunications and transmission and internet; and actions using criteria similar to the Service Contract Labor Standards exemptions in FAR 22.1003-4(d)(1).

*Response:* This rule implements 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, which requires reporting for only four service acquisition portfolio groups: logistics management services, equipment related services, knowledge-based services, and electronics and communications services. No further exemptions are available under the law.

*Comment:* Several respondents recommended that contracted services that meet the definition of commercial items be exempt from ECMRA reporting.

*Response:* The intent of the statute is to enhance DoD's ability to manage the total force, inclusive of military, civilian, and contractor personnel. Specifically, section 2330a requires the military departments and defense agencies to ensure that the inventory of contracts for services required by the

statute is used to inform strategic workforce planning decisions under 10 U.S.C. 129a, develop budget justification materials for services in accordance with 10 U.S.C. 235, and ensure services contracts are not for the performance of inherently governmental functions. An exception for services that meet the definition of a commercial item would exclude significant sums expended by DoD on commercial service acquisitions intended to be covered by the law. Therefore, services meeting the definition of a commercial item are not exempt from the reporting requirement.

*Comment:* Several respondents recommended that firm fixed-price service contracts be exempt from the ECMRA reporting requirement, because these contracts acquire services in their entirety, not as individuals (full-time equivalents).

*Response:* In accordance with paragraph (b) of 10 U.S.C. 2330a, the data required to be collected under the statute includes service contracts and orders that contain firm fixed-prices for the specific tasks to be performed. Therefore, firm fixed-price contracts for the applicable services are not exempt under the proposed rule.

*Comment:* One respondent recommended that the rule exempt DoD intelligence community agency contracts, because the existing exemption for "classified services" is not sufficient to cover the exempt contracts entered into by DoD intelligence community agencies.

*Response:* The statute does not provide for exemptions to the reporting requirement; therefore, the proposed rule does not provide for exemptions, in order to comply with the law.

*Comment:* One respondent recommended that, due to the difficulty in tracking labor for service contracts where contractor employees may spend only small fractions of their time servicing the Government contract (such as refuse collection and software as a service), the rule should be changed to exempt such contracts by using the criteria similar to the Service Contract Labor Standards exemptions (see FAR 22.1003-4(d)(1)).

*Response:* Title 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, now limits data collection to four service acquisition portfolio groups: logistics management services, equipment related services, knowledge-based services, and electronics and communications services. Under this proposed rule, only service contracts with a total estimated value exceeding \$3 million that are for services in one of the four portfolio groups must be reported in SAM.

*Comment:* One respondent questioned whether Congress intended DoD to report contracts for services that are integrally related to supplies, or contracts where the services are a relatively small dollar value in relation to the supplies.

*Response:* Title 10 U.S.C 2330a requires the collection of data on "each purchase of services by a military department or Defense Agency" that meets a certain dollar threshold and is for certain services. The proposed rule clarifies that the requirement applies to contracts or orders that have a total estimated value, including options, exceeding \$3 million and are for services in one of the four service acquisition portfolio groups.

## *2. Expansion of reporting requirement*

*Comment:* Two respondents suggested that the ECMRA reporting requirement be extended to contracts for services valued at or below the simplified acquisition threshold (SAT). Doing so would be consistent with the congressional intent in 10 U.S.C. 2330a for DoD to provide a total inventory of contracted for services.

*Response:* Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, now only requires the collection of data on service contracts, under certain portfolio groups, that exceed \$3 million. This proposed rule implements the statutory threshold. Applying the rule to service contracts below \$3 million is not necessary to implement the statute and would impose an unnecessary burden on the public and DoD.

*Comment:* One respondent suggested that the final rule clarify that services provided ancillary to a lease or rental contract



(such as auto repair and maintenance services incidental to a vehicle lease) are subject to ECMRA reporting requirement. The respondent also recommended that the final rule clarify that the ECMRA reporting requirements apply to contracts for destruction, demolition, and removal.

*Response:* Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, specifies that the service acquisition portfolio group for equipment related services is included in the required reporting group. It is expected that contracts for equipment-related services with a total estimated value, including options, exceeding \$3 million will be reported in SAM.

### *3. Duplicative of existing systems*

*Comment:* Two respondents indicated that the rule is duplicative of the existing FAR rule on service contract reporting that applies to civilian agencies (see FAR subpart 4.17). Respondents stated that there should not be two parallel systems, one for civilian agencies and another for defense agencies, because this situation causes confusion and compliance problems within industry.

*Response:* FAR subpart 4.17 does not apply to DoD. This proposed rule enables DoD to fulfill its obligation under 10 U.S.C. 2330a. Since publication of the proposed rule under 2012-D051, DoD has adopted the use of FPDS to collect a majority

of the required data, in an effort to standardize the reporting process for contractors across the Federal Government.

*Comment:* Several respondents suggested that the ECMRA system is duplicative of other Government systems, such as FPDS, which can also be used to estimate the data provided in the annual inventory of contracts for services.

*Response:* DoD has adopted the service contract reporting process used by other Federal agencies and no longer require contractor reporting in ECMRA. This proposed rule will enable DoD to use FPDS to obtain a majority of the information required by 10 U.S.C. 2330a. FPDS does not provide data on the direct labor hours expended and dollar amounts invoiced for contracted services. Therefore, this proposed rule requires applicable contractors to enter the labor hours and dollar amounts in SAM, which is the process used by other Federal agencies, in accordance with FAR subpart 4.17.

*Comment:* Two respondents suggested that the separate instances of ECMRA (Army, Navy, Air Force, and other DoD agencies) be combined into one DoD-wide ECMRA system.

*Response:* The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

*Comment:* Two respondents suggested that the rule is duplicative of existing DoD reporting requirements, such as: (1) the Army's contractor manpower reporting requirement; and

(2) the Secretary of Defense Memorandum entitled "Enterprise-wide Contractor Manpower Reporting Application," dated November 2012, that requires all new contracts for services to include a contract line item for contractor manpower reporting and a requirement in the performance work statement for contractor manpower reporting.

*Response:* This rule will replace, not duplicate, the existing Army contract manpower reporting requirement and the requirements in the November 2012 Memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness.

*Comment:* Two respondents suggested that the rule exceeds the scope of congressional intent, because DoD is already using its internal records and systems to achieve the statutory objective of the inventory of contracts for services.

*Response:* The rule does not exceed the scope of congressional intent, because existing systems and reports do not fully capture all of the data required by 10 U.S.C. 2330a.

#### *4. Flow down to subcontracts*

*Comment:* Two respondents suggested that the requirement for subcontract reporting be changed. One respondent suggested that the prime contractor be required only to flow down the clause to subcontractors and relieved of the responsibility of reporting

for subcontractors. The other respondent suggested that subcontractor data not be reported at all, as this is inconsistent with commercial practice.

*Response:* The proposed rule does not contain a requirement to flow down a clause. Instead, this proposed rule requires contractors to include its subcontractor labor hours in the total number of labor hours the contractor reports annually to SAM. The proposed rule leaves the process for collecting subcontractor data up to the discretion of each contractor.

#### *5. Need for additional resources*

*Comment:* One respondent suggested that more resources be provided to the Office of the Under Secretary of Defense for Personnel and Readiness workforce that administers and coordinates the inventory of contracts for services.

*Response:* This suggestion is beyond the scope of the rule.

#### *6. ECMRA process*

*Comment:* One respondent noted that the ECMRA interface for the Fourth Estate (other DoD agencies and field activities) is not yet fully operational, in contrast to what is stated in the proposed rule. For example, there is no operational help desk support for Fourth Estate activities. The respondent suggests that the final rule should be delayed until ECMRA is consolidated into a common portal for all DoD agencies, or until

the ECMRA instance for Fourth Estate activities is fully resourced.

*Response:* The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

*Comment:* One respondent questioned how the Government validates data provided by contractors in ECMRA. The respondent suggested that ECMRA be linked to Wide Area WorkFlow and that the contracting officer or the contracting officer's representative be allowed to inspect payroll data in order to validate contractor data entered into ECMRA.

*Response:* Agencies are responsible for ensuring the contractor submits information in SAM that is reasonable and consistent with available contract information. Agencies may use any contract data available, as appropriate and necessary, to meet this responsibility.

*Comment:* One respondent suggested that the rule be clearer about how the ECMRA will protect nonpublic data, such as direct labor hours and cost data.

*Response:* The use of ECMRA is no longer necessary.

*Comment:* One respondent requested clarification on the procedures to follow when the services under one contract support two or more DoD services or agencies.

*Response:* This proposed rule requires contractors to enter information in SAM, which is a single system able to collect all requisite data under this rule.

*Comment:* One respondent suggested that ECMRA should have a built-in capability for an overall point of contact at each agency level who can gather and manage the ECMRA information and that data be gathered at a centralized location.

*Response:* The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM, which is a Governmentwide system.

*Comment:* One respondent noted that it is unduly restrictive to allow only one contractor user per contract to view the data for that contract in ECMRA.

*Response:* The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

*Comment:* One respondent suggested that the rule should clarify the contractor's responsibilities in the event that the Government-populated information in ECMRA is incorrect.

*Response:* The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM. Contractors may contact the SAM Helpdesk or the contracting officer in the event that data needs to be updated in SAM.

*Comment:* One respondent suggested that the requiring activity, and not the contracting officer, be responsible for verifying the contractor's ECMRA compliance is documented.

*Response:* In accordance with FAR 1.602-2, the contracting officer is responsible for ensuring compliance with the terms of the contract.

*Comment:* A respondent suggested that a DD Form 1423, Contract Data Requirements List, be included as a requirement in the rule.

*Response:* The proposed DFARS clauses convey the requirement for contractor reporting to SAM; therefore, a DD Form 1423 is not necessary.

#### *7. Proposed clause changes*

*Comment:* One respondent requested clarification regarding the prescription for the clause at DFARS 252.237-70XX with regard to indefinite-delivery, indefinite-quantity contracts. The respondent asked whether the clause must be included only if the expected dollar value of the individual task or delivery orders will exceed the SAT or if the total dollar value of all the task or delivery orders issued under the contract will exceed the SAT.

*Response:* The rule requires information reporting on each task order that meets the criteria and threshold for service contract reporting. The proposed rule does not require

reporting at the contract level for indefinite-delivery contracts. The rule proposes a basic clause that applies to solicitations, contracts (other than indefinite-delivery contracts), and task orders awarded under non-DoD indefinite-delivery contracts; and an alternate clause that applies to DoD issued solicitations and contracts for indefinite-delivery type contracts. The basic clause and the alternate clause implement the reporting requirement for contracts and/or task orders that have a total estimated value, including options, exceeding \$3 million and are for services in the four specified service acquisition portfolio groups. The basic clause advises contractors to report on the effort performed under the contract or the task order awarded under a non-DoD contract. The alternate clause advises the contractor to report on the effort performed under each task order awarded under a DoD indefinite-delivery contract that meets the criteria and threshold for service contract reporting.

*Comment:* One respondent suggested that the rule include a link to the product service code (PSC) manual available at [www.acquisition.gov](http://www.acquisition.gov), to aid contracting personnel in determining the types of services to which the proposed rule applies or does not apply.



*Response:* The applicable PSCs will be identified in the DFARS Procedures, Guidance, and Information upon publication of the final rule.

*Comment:* One respondent suggested that the rule require the contracting officer to prepare a determination designating specifically the services to which the ECMRA reporting requirement would apply.

*Response:* It is not necessary for the contracting officer to prepare such a determination or provide further clarification to the contractor. This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a.

#### *8. Definition clarification*

*Comment:* One respondent noted that many terms, including "direct labor hours" and "cost data," are not defined in the proposed rule.

*Response:* This proposed rule only uses the term "direct labor hours," which is defined in FAR 2.101.

*Comment:* Two respondents recommended that the term "services" be better defined for the purposes of informing both the Government and contractor when the proposed rule applies and when the contractor is responsible for entering data into ECMRA.

*Response:* This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet or are expected to meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a. When awarded a contract, or task order placed under a non-DoD contract, this rule proposes a basic clause to notify contractors of the requirement to report in SAM on the effort performed under the award. When awarded an indefinite-delivery contract under which orders will be placed that may meet the thresholds and criteria for service contract reporting, this rule proposes an alternate clause to notify contractors of the requirement to report in SAM on the effort performed for a task order issued under the contract that meets the service contract reporting thresholds and criteria.

#### *9. Major rule*

*Comment:* One respondent suggested that the Government reconsider whether this is a major rule. Title 5 U.S.C. 804 defines a major rule as one which the Office of Management and Budget (OMB) determines will cause a major increase in costs or prices for individual industries, or have a significant adverse effect on competition, employment, investment, productivity, or innovation. This rule imposes new reporting requirements, particularly for commercial item contractors that provide professional services and supplies. These contractors would not

have been previously subject to the type of manpower reporting required by this rule. For small businesses, the need to build compliant procedures and automated systems could be a barrier to participating in the federal market. This is particularly the case when the cumulative effect of multiple and duplicative data reporting requirements is considered. The ultimate result over time will be a decrease in competition and innovation in the Federal market.

*Response:* This rule is not a major rule in that it does not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign enterprises. Similar reporting requirements for civilian agencies have appeared in FAR subpart 4.17 since 2014, so many contractors already have experience with this type of reporting requirement. The scope of this rule has been decreased, because 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, limits data collection to four service acquisition portfolios and applies only to contracts and task orders exceeding \$3 million in total estimated value, including options.

#### *10. Initial regulatory flexibility analysis*

*Comment:* Two respondents stated that the proposed reporting system did not have a goal of minimizing the burden to small business and that the constant flow of new regulations to

businesses have little regard for the benefit to the Government or burden on businesses.

*Response:* The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices. The information collection requirement has been narrowly tailored to maximize the use of existing records already maintained by contractors and by the Government. To further minimize the impact, DoD is adopting the existing system and process used by the rest of the Government to obtain the requisite information from contractors, which maintains a familiar and consistent reporting requirement for contractors; and the information is collected electronically, help-desk support and user guides are available for SAM, and reporting requirements will be limited to a small number of data elements to facilitate ease of reporting and reduce contractor burden. In addition, the NDAA for FY 2017 raised the threshold for reporting to \$3 million from the SAT and limited the data reporting to four service acquisition portfolio groups.

#### *11. Paperwork Reduction Act*

##### *a. Government systems already in place*

*Comment:* Two respondents stated that the Government has systems in place for collecting the required data and the rule would require duplicative contractor reporting that is not

necessary for compliance. Two respondents noted that there will be two rules, one for DOD and the other non-DOD, which could potentially apply under a single contract vehicle and that determining which set of rules apply will be burdensome.

*Response:* The rule will not require duplicative reporting by contractors. The DoD and non-DoD reporting requirements are based on separate statutes. Further, the information collection requirement associated with this DFARS Case 2018-D063, once cleared by OMB, will supersede the reporting requirements approved under OMB Control Number 0704-0491, entitled "DoD Inventory of Contracts for Services Compliance." Contracts awarded by DoD, or on behalf of DoD, will contain the proposed DFARS clauses.

*b. Paperwork Reduction Act constraints*

*Comment:* One respondent stated that the rule conflicts with Paperwork Reduction Act constraints on rulemaking, namely that the rule must: (1) be necessary for the proper performance of the agency; (2) not be duplicative of information otherwise reasonably accessible to the agency; and (3) reduce, to the extent practicable and appropriate, the burden on persons who shall provide information to or for the agency.

*Response:* The rule complies with the Paperwork Reduction Act. The information collection is necessary in order for DoD to meet the requirement of 10 U.S.C. 2330a, as amended, to collect

certain service contract data and report annually to Congress. The rule is not duplicative of information otherwise reasonably accessible to DoD. DoD systems do not currently collect all of the data elements required by the statute.

The information collection requirement has been narrowly tailored to minimize the impact of reporting and maximize the use of existing records already maintained by contractors and by the Government. To minimize the impact, the information will be collected electronically, help-desk support will be provided to users, and reporting requirements will be limited to a small number of data elements.

*c. Burden estimates*

*Comment:* Two respondents commented that the rule underestimates the number of contractors that will be impacted. One respondent indicated that the total estimated number of respondents of 13,269, including 7,962 for small businesses, seems low, since the GSA Schedules alone have 20,000 contractors and 80% of the contractors are small businesses. One respondent stated that the estimate for the total number of annual responses of approximately 54,000 appears low. In addition, several respondents commented that the estimate of an average of 1.4 hours per response is too low, citing reasons such as: (1) the billions of dollars in services for which DoD contracts for annually and the corresponding volume of data required to be

entered, (2) the limitation of the ECMRA bulk upload capability, or (3) the impact on response time resulting from the flow down of the reporting requirement to subcontractors. One respondent stated that the burden is disproportionately high for small businesses that are less likely to have the necessary internal infrastructure.

*Response:* The estimated burdens for respondents and responses published in the previously proposed rule have been updated to reflect the revised requirements of 10 U.S.C. 2330a, as amended.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

#### *A. Background*

Consistent with the determinations that DoD made with regard to application of the requirements of section 846 of the NDAA for FY 2011, DoD does not intend to apply the requirements of 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, to contracts at or below the simplified acquisition threshold (SAT) or for commercially available off-the shelf items (COTS) items, but does intend to apply the rule to contracts for the acquisition of commercial items.

Section 846 of the NDAA for FY 2011 and section 812 of the NDAA for FY 2017 are silent on applicability to contracts and subcontracts in amounts no greater than the SAT or for the

acquisition of commercial items. Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, however, only requires the collection of data on service contracts, under certain portfolio groups, that exceed \$3 million, which effectively precludes application to acquisitions under the SAT. Also, the statute does not provide for civil or criminal penalties. Therefore, the statute does not apply to contracts or subcontracts in amounts not greater than the SAT or to the acquisition of commercial items unless the Principal Director, Defense Pricing and Contracting, makes a written determination as provided in 41 U.S.C. 1905 and 10 U.S.C. 2375.

*B. Applicability to Contracts for the Acquisition of Commercial Items, Excluding COTS Items*

Title 10 U.S.C. 2375 exempts contracts and subcontracts for the acquisition of commercial items, including COTS items, from provisions of law enacted after October 13, 1994, that, as determined by the Under Secretary of Defense for Acquisition and Sustainment (USD (A&S)), set forth policies, procedures, requirements, or restrictions for the acquisition of property or services unless—

- The provision of law—
  - Provides for criminal or civil penalties;
  - Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 2533a or that strategic



materials critical to national security be bought from American sources pursuant to 10 U.S.C. 2533b; or

- o Specifically refers to 10 U.S.C. 2375 and states that it shall apply to contracts and subcontracts for the acquisition of commercial items (including COTS items); or

- USD(A&S) determines in writing that it would not be in the best interest of the Government to exempt contracts or subcontracts for the acquisition of commercial items from the applicability of the provision.

This authority has been delegated to the Principal Director, Defense Pricing and Contracting.

Consistent with 10 U.S.C. 2375, DoD has determined that it is in the best interest of the United States to apply the requirements of 10 U.S.C. 2330a to the acquisition of commercial items, excluding COTS items. The intent of the statute is to enhance DoD's ability to manage the total force, inclusive of military, civilian, and contractor personnel. Specifically, section 2330a, as amended, requires the military departments and defense agencies to ensure that the inventory of contracts for services required by the statute is used to inform strategic workforce planning decisions under 10 U.S.C. 129a and develop budget justification materials for services in accordance with 10 U.S.C. 235. An exception for services that

meet the definition of a commercial item would exclude significant sums expended by DoD on contracted services intended to be covered by the law, thereby undermining the overarching public policy purpose of the law. Therefore, this rule will apply to the acquisition of commercial items, excluding COTS.

#### **IV. Expected Cost Impact**

This rule will require a contractor to report data in SAM on an annual basis for a DoD contract or task order that is valued in excess of \$3 million and is for logistics management services, equipment related services, knowledge-based services, or electronics and communications services.

When applicable, contractors will be required to annually report the total dollar amount invoiced for and the total number of direct labor hours expended on services performed under the contract or task order during the preceding fiscal year. The total number of direct labor hours reported to SAM should be the total of both the contractor hours and its subcontractors' hours. Significant costs are avoided by using existing Government systems (FPDS and SAM) to collect elements of the required data.

The following is a summary of the estimated public and Government costs calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

SUMMARY	Public	Government	Total
Present Value	\$10,441,186	\$7,830,886	\$18,272,072
Annualized Costs	\$730,883	\$548,162	\$1,279,045

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), search for "DFARS Case 2018-D063," click "Open Docket," and view "Supporting Documents."

#### **V. Executive orders 12866 and 13563**

Executive orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **VI. Executive Order 13771**

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O.

12866.

## **VII. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only requires annual reporting of two data items for a limited number and type of service contracts. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a data collection system that provides management information on each purchase of services by a military department or defense agency in excess of \$3 million for the following service acquisition portfolio groups: logistics management services; equipment related services; knowledge-based services; and, electronics and communications services.

The objective of this proposed rule is to implement 10 U.S.C. 2330a, as modified by section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328).

Based on data from the Federal Procurement Data System for FY 2016 through 2018, DoD awards annually an average of 4,386 service contracts and orders to 1,934 unique entities that have

an estimated value greater than \$3M and are within the four portfolio groups outlined in the rule. Of the 4,386 contracts and orders awarded annually, approximately 2,059 (47%) are made to 1,227 (63%) unique small businesses entities.

This proposed rule requires all contractors that are awarded a contract or order in excess of \$3 million for services in any of the four service acquisition portfolio groups to report contract data in SAM. The contractor is required to report the total amount invoiced for services performed during the preceding fiscal year and the number of direct labor hours, including subcontractor hours, expended on services performed during the preceding fiscal year. The Government estimates that a journeyman level contractor employee with basic knowledge of the contract would be required to enter the data. The contractor employee may also need to gather additional billing information from the organization in order to complete the data input in SAM.

This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities

concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2018-D063), in correspondence.

#### **VIII. Paperwork Reduction Act**

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2018-D063, Data Collection and Inventory for Services Contracts, to the Office of Management and Budget. Upon OMB clearance of this new collection and publication of the associated final DFARS rule, a related program clearance, OMB Control Number 0704-0491, DoD Enterprise-wide Contractor Manpower Reporting Application (ECMRA), will be discontinued.

A. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for gathering and maintaining the data and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

*Respondents:* 1,934.

*Responses per respondent:* 2.267, approximately.

*Total annual responses:* 4,386.

*Hours per response: 2 hours.*

*Total response burden hours: 8,772.*

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), with a copy to the Defense Acquisition Regulations System, Attn: Carrie Moore OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notification, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notification.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of

appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or email [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2018-D063 in the subject line of the message.

#### **List of Subjects in 48 CFR Parts 204, 212, and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

2. Add subpart 204.17, consisting of 204.1700, 204.1703, and 204.1705, to read as follows:

##### **Subpart 204.17—Service Contracts Inventory**

**Sec.**



**204.1700** Scope of subpart.

**204.1703** Reporting requirements.

**204.1705** Contract clauses.

**Subpart 204.17—Service Contracts Inventory**

**204.1700** Scope of subpart.

This subpart prescribes the requirement to report certain contracted services in accordance with 10 U.S.C. 2330a.

**204.1703** Reporting requirements.

(a) *Thresholds.* (i) Service contractor reporting of information is required in the System for Award Management (SAM) when a contract or order—

(A) Has a total estimated value, including options, that exceeds \$3 million; and

(B) Is for services in the following service acquisition portfolio groups (see PGI 204.1703 for a list of applicable product and service codes):

(1) Logistics management services.

(2) Equipment related services.

(3) Knowledge-based services.

(4) Electronics and communications services.

(ii) Contractor reporting is required annually, by October 31, on the services performed under the contract or order, including any subcontracts, during the preceding Government fiscal year.

(iii) For indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements—

(A) Contractor reporting is required for each order issued under the contract or agreement that meets the requirements of paragraph (a)(i) of this section; and

(B) Service contract reporting is not required for the basic contract or agreement.

(b) *Agency reporting responsibilities.* In the event the agency believes that revisions to the contractor-reported information are warranted, the agency shall notify the contractor.

**204.1705 Contract clauses.**

(a)(i) Use the basic or the alternate of the clause 252.204-70XX, Reporting Requirements for Contracted Services, in solicitations, contracts, agreements, and orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(A) Have a total estimated value, including options, that exceeds \$3 million; and

(B) Are for services in the following service acquisition portfolio groups—

- (1) Logistics management services;
- (2) Equipment related services;
- (3) Knowledge-based services; or

(4) Electronics and communications services.

(ii) Use the basic clause in solicitations and contracts, except solicitations and resultant awards of indefinite-delivery contracts, and orders placed under non-DoD contracts that meet the criteria in paragraph (a)(i) of this section; or

(iii) Use the alternate I clause in solicitations and resultant awards of indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements, when one or more of the orders under the contract or agreement are expected to meet the criteria in paragraph (a)(i) of this section.

#### **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

3. Amend section 212.301 by adding paragraph (f)(ii)(j) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(f) \* \* \*

(ii) \* \* \*

(j) Use the clause at 252.204-70XX, Reporting Requirements for Contracted Services, to comply with 10 U.S.C. 2330a.

(1) Use the basic clause as prescribed in 204.1705(a)(i) and (ii); and

(2) Use the alternate I clause as prescribed in 204.1705 (a)(i) and (iii).

\* \* \* \* \*

**PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Add section 252.204-70XX to read as follows:

**252.204-70XX Reporting Requirements for Contracted Services.**

*Basic.* As prescribed in 204.1705(a)(i) and (ii), use the following clause:

REPORTING REQUIREMENTS FOR CONTRACTED SERVICES-BASIC (DATE)

(a) The contractor shall report annually, by October 31, at *www.sam.gov*, on the services performed under this contract or order, including any subcontracts, during the preceding Government fiscal year (October 1 - September 30).

(b) The Contractor shall report the following information for the contract or order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the contract or order.

(2) The number of Contractor direct labor hours, to include subcontractor direct labor hours, as applicable, expended on the services performed under the order or contract during the previous Government fiscal year.

(c) The Government will review Contractor reported information for reasonableness and consistency with available

contract information. In the event the Government believes that revisions to the Contractor reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

*Alternate I.* As prescribed in 204.1705(a)(i) and (iii), use the following clause, which substitutes "contract or agreement for each order" in lieu of "contract or order" in paragraph (a) and "order" in lieu of "contract or order" in paragraphs (b) and (b)(1) and (2), and identifies the dollar threshold and service acquisition portfolio groups for which orders under the contract or agreement require service contract reporting.

REPORTING REQUIREMENTS FOR CONTRACTED SERVICES—ALTERNATE I

(DATE)

(a) The contractor shall report annually, by October 31, at [www.sam.gov](http://www.sam.gov), on services performed during the preceding Government fiscal year (October 1 - September 30) under this contract or agreement for each order, including any subcontract, which exceeds \$3 million for services in the following service acquisition portfolio groups:

- (1) Logistics management services.
- (2) Equipment related services.
- (3) Knowledge-based services.

(4) Electronics and communications services.

(b) The Contractor shall report the following information for the order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the order.

(2) The number of Contractor direct labor hours, to include subcontractor direct labor hours, as applicable, expended on the services performed under the order during the previous Government fiscal year.

(c) The Government will review Contractor reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

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